C O N T E N T S

Legal Department Fiel No. O. Village Panch/47

Sr. No.	Compilation No.	Subject	Pages
		Bombay Village Panchayats Act,1933.	
1.	R.I.No.9675/4-11-46 O.No.18/2/1/47	Whether the meeting for the election of the Sarpanch was validly convened on 20th July 1946 by the President D.L.B. Thana	1-2
2.	R.I.No.1332/5/4-47 O.No.1929/26-2-47	Whether there is any legal objection to informing the Collr. of Thana to expedite the by-election and to advise the newly elected Sarpanch not to hold meetings in the meantime	3-8
3.	R.I.No.8813/23-7-47 O.No.7894/31-7-47	Bom. Village Panchayats Taxes and Fees Rules, 1944 -- Whether rule 38 can be constructed as providing for farming out of bazar fee-	9-10
4.	O.No.9363/20/9/47	Whether police patels and revenue patels are disqualified to be members of the Panchayats under and can be removed from their offices	11-12
5.	R.I.No.14166/27-11-47 O.No.11768/8-12-47	Whether the order passed by the Prant Officer dismissing the Secretary of the Panchayat is invalid	13-14

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5 Copies

It appears that the Village Panchayat, Dombivali, consisted of eleven members sevan of whom resigned en-block. Mr. M.K. Pradha , Sarpanch, also resigned his office of Sarpanch whereupon the President, District Local Board, Thana called a meeting on 20th July 1946 for the election of the Sarpanch. By that time Mr. Pradhan resigned his membership also with the result there remained only three members. At the meeting convened on 20th July 1946 these three members were present and elected Dr. Sabnis as Sarpanch of the Panchayat for the remaining term of the Panchayat. The question for the consideration of the R.L.A. is whether the meeting was validly convened on 20th July 1946 .

"The acts of a corporation other than a trading corporation are those of the major part of the corporators, corporately assembled. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting and of that major part there must be a majority in favour of the act or resolution contemplated. "here therefore a corporation consists of thirteen members there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or greater number will bind the Corporation" (See Halsbury Vol. VIII, p. 54). By-law No. 6 of the By-laws framed by the District Local Board Thana under section 19 of the Bombay Village Panchayats Act, 1933 provides;

> "No business shall be transacted at any meeting unless a majority of the members are present from the beginning to the end of such meeting. If there is no quorum the presiding authority shall adjourn the

meeting to such time as it thinks proper

etc.

It is apparent that " a majority of members" means a majority of the total number of members constituting the Panchayat(cf. section 36(7) of the Bombay District Municipal Act, 1901, proviso to section 35(6) of the Bombay Municipal Boroughs Act, 1925 and section 35(2)(c) of the Bombay Local Boards Act 1923). To constitute a valid meeting in the present case at least six members were required to be present. Since there were only three members present, the meeting was not validly convened on 20th July 1946 and the election of Dr. Dzenis as Sarpanch is clearly illegal. Section 24 cannot be availed of for the purpose. The view taken by the Collector in his letter at p. 13 ante is not correct.

Sd/-

O.C.

Remembrancer of Legal Affairs.

U.R. to O.D., No. 18 . Dated the 2nd January 1947

Mjr/8/5

4 Copies

In R.L.A's opinion No. 18 dated 2-1-1947, the C.D. was advised that since at the meeting called by the President, District Local Board, Thana on 20-7-46 for election of the Sarpanch of the Village Panchayat, Dombivali, there were only three members present, the meeting was not validly convened and consequently the election of Dr. Subnis as Sarpanch was illegal. The C.D. however, considers that merely because there are only three members on the panchayat, it cannot be said that the panchayat has ceased to exist. Under the circumstances, the C.D. proposes to inform the Collr. of Thana to expedite the by-election and to advise the newly elected Sarpanch not to hold meetings in the meantime.

It is also proposed to inform the ex-Sarpanch, Mr. Paradhan, that the question whether Dr. Subnis was duly elected or not is one for a Court of Law to decide, and that if he was so advise, he should file a suit for such declaration. A letter is accordingly proposed to be addressed to Mr. Pradhan, and the Collr. of Thana is also proposed to be informed as stated above.

The question for R.L.A's consideration is whether there is any legal objection to informing the Collr. of Thana as proposed.

Section 24 of the Bom. Village Panchayats Act, 1933, no doubt provides that during any vacancy in the panchayat, the continuing members may act as if no vacancy had occurred but this provision would not surmount the difficulty arising on account of want of prescribed quorum at the meetings as provided by by-law No. 6 of the By-Laws framed by the D.L.B., Thana and consequently no business can be carried on unless at least six members are in office. It is, however, open to the Collr. to reconstitute the village panchayat by holding by-election under section 23(1) of the Act. Unless, therefore, vacancies are

filled up by holding by-election, and the required corum is available, it is not feasible for the village Panchayat, Dombivali, to convene meetings for conducting its business. That being so, there is no objection to inform the Collr. of Thana, as proposed in the draft at page 29 ante.

Presumbaly by virtue of his election as Sarpanch, Dr. Sabnis should have assumed charge of his office as Sarpanch and except section 21 there appears no other provision in the Act under which Dr. Sabnis can now be removed from his office as Sarpanch." An office cannot be said to be vacant when a person is in actual exercise of the office, even though under an irregular appointment, and it will be necessary for the occupier to be regularly removed from the office. A person de facto in possession of an office is presumbed to be rightly in possession until the contrary is established by due course of law" (p. 34 of Vol. VIII of Halsbury's Laws of England). Consequently, the proper course, under the circumstances of the case, is to allow Dr. Sabnis to function as Sarpanch and to refer Mr. Pradhan to Civil Court (cf. R.L.A's 9697 dated 11-11-1941

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It is thus evident that there is no legal objection to taking action as proposed in the G.D. office note dated 30-1-47 (pp. 27-28 ante) The Paper may be "seen and returned".

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A.L.R.

Sd/-

R.L.A.

Sd/-

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Office of the R. L. A

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U.O.R. to G.D. No. 1929

Dated the 26th February 1947

Mjr/8/5

4 Copies

As pointed out in R.L.A's opinion No. 593, dated the 31st January 1934, no rules can be made under section 108(m) of the Bombay Village Panchayats Act, 1933, for farming out the bazar tax or any other tax. Rules 38 of the Bombay Village Panchayats Taxes and Fees Rules, 1944, cannot therefore be construed as providing for farming out of bazar fee.

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U.R. to H. & L.G.D. No. 7894 ., dated the 21st ~~xxxx~~ July 1947

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It appears that the police-Patel of the village of Bhurambud in Kolaba district, who is an ex officio member of the panchayat of the village, absented himself for six consecutive months from the meetings of the panchayat without the leave of the said panchayat. In the linked case the revenue patel of the village of Kharavandi in Ahmednagar district who is an ex officio member of the panchayat of that village failed to pay the house tax due to the panchayat within three months from 25.4.46 on which date the tax was required to be paid. The question for consideration is whether these patels are disqualified to be members of the panchayats under the Bombay Village Panchayats Act, 1933 and can be removed from their offices.

Under section 22(1)(b) of the Bombay Village Panchayats Act, 1933 any member of a panchayat who during his term of office absents himself for six consecutive months from meetings of the panchayat without the leave of the said panchayat shall cease to be a member and his office shall become vacant. It is true that a patel being an ex officio member of a panchayat under section 6(1) is neither an elected nor an appointed member but even as an ex officio member of a panchayat he cannot escape the disqualification under section 22(1)(b) which is in general terms applicable to all members of a panchayat. Consequently, the police patel of Bhurambud, who absented himself for six consecutive months from the meetings of the panchayat without leave is disqualified and has ceased to be a member and his office has become vacant. Under section 23(1) any vacancy caused by the disablement, death, resignation, disqualification, absence without leave of a member shall be filled by the election of a member who shall hold office so long only as the election of a member in whose place he has been elected would have held office if the vacancy had not occurred. It is therefore apparent that section 23 provides for the filling up of a vacancy of an elected member. An ex-officio member of a panchayat is not an elected member. Consequently, section 23(1) will not apply to the present case. It is true that it is a general principle that a corporation has a right to have all its

offices filled (see Halsbury's Laws of England Vol. VIII p.62). But this general principle is subject to the express provision of section 24 of the Bombay Village Panchayats Act which provides that during any vacancy in the panchayat, the continuing members may act as if no vacancy had occurred. Consequently, it would not be necessary that the vacancy caused by the disqualification of the patel should be filled in.

In the linked case the revenue patel has incurred a disqualification under section 8(i) of the Bombay Village Panchayats Act, 1933. Section 9A empowers the Collector to declare the office vacant of a member elected or appointed if at any time he considers that the member elected or appointed has incurred any of the disqualifications mentioned in section 8. A patel as an ex officio member of a panchayat is neither an elected nor an appointed member of the panchayat. Consequently section 9A will have no application. Section 21 provides for the removal from office of a member who has been guilty of misconduct or neglect or incapacity to perform his duty.

It is difficult to construe non-payment of house tax as misconduct; particularly since the Act lays down the procedure to make recoveries of the tad. Removal by the Collector may not, thereore, be feasible; and as in the other case the Statute does not declare that his office shall become vacant. Nevertheless under section 8 he cannot continue to be the member of the Panchayat; and the best course would be for the Panchayat itself to intimate to the Patel that he cannot continue to be the member any longer. These questions are now of academic interest since the new Act. which is liekly to be passed shortly does not provide for the appointment of patel s as ex officio members of the panchayats.

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17/9/
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U.R. to H. & L.G.D. No. 9363 dated the 20th September 1947.

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4 Copies.

R.T. 14166 / 27-11-47

Dismissal of Village Panchayat Secretary by Prant Officer

Bombay Land Revenue Code, 9, and Bombay Village Panchayats Act, 1933

Office of the R.L.A.

Assistant Collectors and Deputy Collectors are appointed by Provincial Government under section 9 of the Land Revenue Code and being in charge of a Prant (Sub Division) they are called Prant Officers. The term Prant ~~Prant~~ Officer is thus a convenient expression indicating th the Officer is in charge of a Prant and the use of this expression does not suggest that the officer concerned was not acting as Deputy Collector or Assistant Collector or was holding a different post. In the circumstances, the order passed by the Prant Officer dismissing the Secretary of the Panchayat is not invalid.

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O.C.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 11768
dated the 8th December 1947

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File No. O.L.R. Bom City/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay City Land Revenue Act, 1876.

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Office of the R.L.A.

In suits Nos. 7 and 23 of 1943 the Revenue Judge of Bombay has held that the Bombay Government has no right to levy and recover assessment in respect of the suit plots of land. It is true that in the present case the indenture does not relieve the two pieces of land from liability to assessment for land revenue now or hereafter leviable in respect thereof under the Bombay City Land-revenue Act, 1876; but "leviable" means legally leviable. If the decision of the Revenue Judge in suits Nos. 7 and 23 of 1943 is correct, it would not be competent for Government to levy any assessment on the two plots in the present case also, notwithstanding the aforesaid express condition in the indenture between the Central Government and the purchaser. Consequently the view taken by R.D. at pp. 21, and 22 ante is not correct.

O.C. Id/- D.V.V.
Remembrancer of Legal Affairs.

U.R.* to R.D. No. 264 , dated 9th January 1947-.

V.VK.
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Office of the R.L.A.

In Revenue suits Nos. 7 and 23 of 1943 the Revenue Judge held that the lands on acquisition vested in the Central Government as "Free hold lands" and their subsequent disposal by the Central Government to third parties "subject to payment of all taxes etc." could bot entitle the Provincial Government to levy assessment. An appeal against that decision is now pending in the High Court. But the Advocate General who was consulted in the matter has opined thus:

"I am inclined to agree with the Revenue Judge's judgment. The matter is however n t free from doubt and as many other cases of the similar nature have arisen it is advisable to appeal" (see Advocate General's opinion No. 16, dated 23-3-1945).

It is therefore clear that the prospects of success in the appeal are not very bright and consequently it seems advisable to negotiate a settlement with the Central Government as proposed by R.D.

O.C. Id/- D.V.V

Remembrancer of Legal Affairs.

U.R. to R.D. No. 2920, dated the 26th March 1947.

V.VK.
7/4/1956/

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